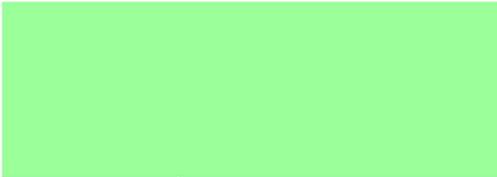




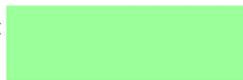
U.S. Citizenship
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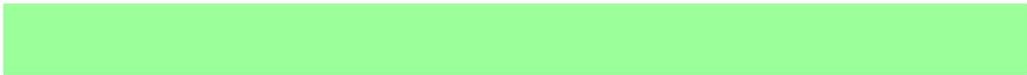
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Date: **OCT 09 2014**

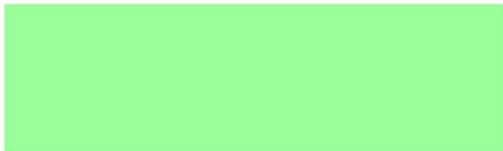
Office: VERMONT SERVICE CENTER

File: 

IN RE: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition based on the petitioner's failure to establish that she resided with her United States citizen spouse, and that she entered into the marriage with him in good faith.

On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner, a citizen of Jamaica, entered the United States on October 26, 2007 as a nonimmigrant worker. She married A-W¹, a U.S. citizen, on October [REDACTED] in Cleveland, Ohio. A-W- filed two Form I-130 immigrant visa petitions on behalf of the petitioner, both of which were denied. The petitioner filed the instant Form I-360 self-petition on March 20, 2013. Upon review of the submission, the director issued a Notice of Intent to Deny (NOID) based on the petitioner's failure to establish that she married A-W- in good faith, among other issues. The NOID did not include the petitioner's joint residence with her spouse as a basis for the intended denial. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's grounds for denial for the following reasons.

Joint Residence

The preponderance of the relevant evidence establishes that the petitioner resided with her U.S. citizen spouse. On the Form I-360 self-petition, the petitioner stated that she resided with A-W- between September 30, 2009 and March 20, 2012 at an apartment on [REDACTED] in Cleveland. The

¹ Name withheld to protect the individual's identity.

petitioner submitted an affidavit dated March 13, 2013, in which she asserted that she moved in with A-W- in September 2009, shortly before they married in October 2009. The petitioner described the couple's financial difficulties in the home, stating that sometimes she would go for days without eating because there was no food in the apartment and she was dependent on A-W-. The petitioner submitted telephone bills addressed to both her and A-W- at the [REDACTED] apartment, dated between February and April 2010. She also submitted a cable television bill addressed to both her and A-W- at the [REDACTED] apartment, dated December 2010.

In response to the NOID, which did not address the petitioner's joint residence with her husband, the petitioner submitted correspondence from a life insurance company addressed to both the petitioner and A-W- at the [REDACTED] apartment, dated July 2010. The petitioner also provided an affidavit from her sister, dated September 25, 2013, in which her sister stated that she did not like to stay with the petitioner during visits because she felt uncomfortable observing A-W-'s treatment of the petitioner in their home.

In his decision, the director discounted much of the relevant evidence and found that the petitioner failed to establish that she had resided with A-W-. The director indicated that the petitioner's affidavit contained insufficient details regarding daily routines and shared responsibilities to demonstrate that she resided with her spouse. The director acknowledged the telephone and cable television bills, but discounted this evidence stating that bills reflected only "information supplied to the compan[ies]." The director found that without bank statements to prove that the accounts were mutually maintained by the petitioner and her spouse, the bills were insufficient evidence of the petitioner's joint residence, and other required criteria. In his decision, the director indicated that USCIS requested further documentary evidence of the petitioner's joint residence with her spouse in the October 29, 2013 correspondence. However, the NOID did not request additional evidence on this issue.

The petitioner must establish by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). In evaluating whether the petitioner has met that burden, the director must consider "any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J). The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).

De novo review of the relevant evidence establishes the petitioner's joint residence with A-W-. The director erred in discounting the petitioner's statement that she resided with her husband as insufficient because she did not provide details regarding their daily routine and shared responsibilities. The petitioner credibly stated that she resided with the petitioner, and described how she was sometimes left to fend for herself in the home without food or financial resources. The petitioner's claim that she resided with A-W- at the [REDACTED] apartment is supported by telephone and cable television bills in both her and A-W-'s names, and correspondence regarding their joint life insurance policy. The petitioner's joint residence with A-W- is further supported by her sister's affidavit stating that she did not like to stay with the petitioner because she was uncomfortable with how A-W- treated the petitioner in their home. In finding this evidence insufficient, it appears that the director applied a

higher standard of proof than the requisite preponderance of the evidence standard. *See Matter of Chawathe*, 25 I&N Dec. at 375. The petitioner has established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

The petitioner has also established by a preponderance of the evidence that she entered into her marriage in good faith. In her March 14, 2013 affidavit, the petitioner recounted meeting A-W- at a picnic in 2008 while visiting her brother in Cleveland. She described keeping in touch with A-W- by telephone and text message from Alabama and New York before moving to Cleveland so she could see A-W- more often. She discussed their courtship and shared activities, and stated that she was falling in love with A-W- when he asked her to move in with him. The petitioner submitted photographs of her and A-W-'s wedding, and of the couple on other occasions, and bills for telephone and cable television service in the names of both A-W- and the petitioner. In her affidavit, the petitioner discussed the immigrant visa petitions that A-W- filed on her behalf. The petitioner indicated that A-W- was a drug addict and was under the influence of drugs during the couple's immigration interview. She described his memory problems as a result of his drug usage, and indicated that his drug use and memory problems affected the outcome of the interview.

On August 29, 2013, the director issued a NOID noting that A-W-'s second immigrant visa petition filed on behalf of the petitioner was denied based on information obtained during the couple's immigration interview, which indicated that the marriage was not bona fide. The NOID stated that the petition was subject to the marriage fraud bar at section 204(c) of the Act and advised the petitioner that she needed to submit "clear and convincing evidence" of her good-faith entry into the marriage with A-W-.

The director erred in finding section 204(c) of the Act applicable to the instant matter. Section 204(c) of the Act bars approval of subsequent immigrant petitions where the alien beneficiary has previously been accorded, or sought to be accorded, immediate relative status based on a fraudulent marriage. The section applies only to petitions based on a marriage subsequent to the fraudulent marriage or attempt or conspiracy to marry. The plain language of the statute refers to an immigrant status that was "previously" accorded, or sought to be accorded. Section 204(c)(1) of the Act, 8 U.S.C. § 1154(c)(1). Further, the statute is written entirely in the past tense, indicating that section 204(c) of the Act applies to fraud in a prior marriage. *See also Matter of Isber*, 20 I&N 676, 677-78 (BIA 1993) (holding that section 204(c) of the Act refers to fraud in a "prior" marriage, consistent with Congressional intent). As the instant Form I-360 self-petition is based on the *same* marriage to A-W- for which the two prior Form I-130 petitions were filed, section 204(c) of the Act does not apply.

Further, the director is required to come to an independent decision that section 204(c) of the Act applies and should not give conclusive effect to determinations made in a prior proceeding, although any relevant evidence in the record may be considered. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978); *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990). A determination to apply section 204(c) of the Act must be based on "substantial and probative evidence" that the self-petitioner attempted or conspired to enter into a prior marriage for the purpose of evading the

immigration laws. 8 C.F.R. § 204.2(a)(1)(ii). Here, it is not apparent that the director made an independent review of the evidence to determine that section 204(c) of the Act applied, and relied on the abuser's statements in the Form I-130 proceedings.

In the NOID, the director indicated that the petitioner's documentation was insufficient to establish by clear and convincing evidence that she entered into her marriage with A-W- in good faith, and requested additional evidence. The director provided suggestions of possible evidence to be submitted, which mirror the requirements of the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B) for a bona fide marriage exemption from the bar at section 204(g) of the Act. Section 204(g) of the Act bars approval of immigrant visa petitions based on marriages entered into during removal proceedings, unless the petitioner establishes eligibility for a bona fide marriage exemption. 8 U.S.C. § 1154(g). However, the administrative record in this matter reveals that the petitioner was *not* in removal proceedings when she married A-W-. Thus, she is not required to establish her good-faith entry into the marriage by clear and convincing evidence. The petitioner must establish by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375.

In response to the NOID, counsel submitted a letter in which he referenced the petitioner's description of A-W-'s drug usage and its effect on the immigration interview. The petitioner provided medical records for A-W-, dated February 2011, indicating that he sought medical attention for his memory issues, among other health concerns. The medical records state that A-W- reported that during a job interview, he was unable to recall basic details regarding his family. In response to the NOID, the petitioner also submitted documents regarding the couple's life insurance policy, and an affidavit from the petitioner's brother, dated September 17, 2013, stating that he felt responsible for the abuse the petitioner suffered because he introduced her to A-W-.

Nevertheless, in both the NOID and the decision, the director emphasized the need for traditional forms of documentation and found the petitioner's evidence "insufficient." The petitioner submitted relevant documentation including joint telephone and cable television bills, correspondence regarding life insurance, photographs, and a third-party affidavit. The director inappropriately discounted much of this evidence, including the life insurance documentation because the petitioner did not submit proof that the policy had been paid. *De novo* review of the relevant evidence reveals documentation in the administrative record that at least the petitioner's part of this policy benefiting A-W- was paid.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). *De novo* review of the record establishes the petitioner's good-faith entry into her marriage by a preponderance of the evidence. In her affidavit, the petitioner credibly described her and A-W-'s courtship, shared residence and experiences, as described above, and the remaining, relevant evidence supports her claim.

The petitioner has established by a preponderance of the evidence that she married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director erroneously applied sections 204(c) and 204(g) of the Act to the petitioner's case. The petitioner is therefore required to demonstrate her eligibility by a preponderance of the evidence, not by the higher clear-and-convincing standard, as indicated by the director. She has so demonstrated.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. at 375. *De novo* review of the record reveals that the petitioner has met this burden. Because she has established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.